



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Historic Area Work Permits	<b>Number</b> 11-20
<b>Originating Department</b> Historic Preservation Commission	<b>Effective Date</b>

Montgomery County Regulation on:

**HISTORIC AREA WORK PERMITS**

**HISTORIC PRESERVATION COMMISSION**

Issued by: County Executive  
Regulation No. 11-20  
COMCOR No. 24A.04.01

Authority: Code Section 24A-7  
Council Review: Method (2) under Code Section 2A-15  
Register Vol. 37 No. 10

Comment Deadline: 10/31/2020  
Effective Date: \_\_\_\_\_  
Sunset Date: None

**Summary:** This regulation, which amends Executive Regulation 27-97, provides for the Historic Preservation Commission's delegation of its authority to review and approve certain Historic Area Work Permit applications to Commission staff in accordance with Code Section 24A-7(g)(2).

**Staff Contact:** For further information or to obtain a copy of this regulation, contact Rebeccah Ballo at [Rebeccah.Ballo@montgomeryplanning.org](mailto:Rebeccah.Ballo@montgomeryplanning.org).

**Address:** Written comments on this regulation should be sent to:

Rebeccah Ballo  
Historic Preservation Section  
Maryland National Capital Park and Planning Commission  
2425 Reedie Drive  
Wheaton, Maryland 20902



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## 24A.04.01.01 Historic Area Work Permits

### 1.0 Purpose

This regulation is established for the proper transaction of the business of the Montgomery County Historic Preservation Commission (“Commission”), pursuant to Section 24A-4(h) of the Montgomery County Code (2014), as amended. As required by Section 24A-7(c), upon receipt of a completed application for the issuance of an Historic Area Work Permit, the Commission must schedule a public appearance at a Commission meeting, at which time it will consider the application. This regulation shall govern the receipt, processing, hearing, and final disposition of all applications for the issuance of an Historic Area Work Permit.

### 1.1 Definitions

For the purposes of this regulation, the following words and phrases have the meaning assigned to them below, except where otherwise indicated in this regulation.

- (a) Local Advisory Panel (LAP) - A group of individuals appointed by the Commission to assist and advise the Commission in the performance of its functions.
- (b) Applicant - Any person that files an application for the issuance of an historic area work permit. The applicant must be the owner, contract purchaser, or authorized agent of the subject historic site or historic resource within an historic district.
- (c) Application - A request for the issuance of an historic area work permit for work as described in Sections 24A-6(a)(1)-(3). The application shall be in such form and contain such information as may be required to provide information as shall be necessary for the Commission to evaluate and act upon such application in accordance with the provisions of Chapter 24A.
- (d) Party - Any person identifying himself to the Commission in the official record as having an interest in the outcome of an application being considered.
- (e) Person - Any individual, business entity, whether incorporated or not, association, or any other group of individuals, however organized.
- (f) Ordinary Maintenance - Work on an historic site or an historic resource within a historic district which does not alter in any way the exterior features of the subject property, including the architectural style, design, and general arrangement of the exterior, as well as the nature, texture, details, and dimensions of building materials, windows, doors, siding, etc. This definition applies, whenever appropriate, to the appurtenances and environmental setting of an historic site or resource, as well as to the building, structure, or object itself.



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## 1.2 Submission of Application

- (a) Filing - Applications must be filed with the director as required by Section 24A-7(a), with the exceptions noted in 24A-6(b) and with the definition of Ordinary Maintenance found in Section 1.1 (f) above.
- (b) Scheduling - In order to be considered at a regularly scheduled public appearance, applications shall be filed with the director three (3) weeks prior to the meeting date for which it is to be scheduled.
- (c) Completeness - Upon receipt by the director, each application will be evaluated for completeness. Those judged to be complete, based upon the submission requirements specified by the Commission and listed on the application, will be promptly forwarded to the Commission. Any application deemed incomplete by the director or by the Commission's staff will not be accepted for filing. Incomplete applications shall be promptly returned to the applicant, either by return mail or by hand if the applicant is present at the time of the determination.
- (d) Application Date - Complete applications shall be deemed filed upon acceptance by the director.

## 1.3 Notice of Public Appearance

- (a) Publication - Before an application may be considered at a public appearance, the Commission must publish notice of the public appearance approximately fourteen (14) calendar days prior to the date of the public appearance in a newspaper of general circulation within the county. The notice must specify the name and address of the applicant, the address of the property, and the fact that an application is pending for work upon the property. The notice must also specify the date, time and place of the public appearance.
- (b) Notification by Mail - Approximately fourteen (14) calendar days before the public appearance on an application, the Commission shall mail notice of the date, time, and place of the public appearance to the applicant, any existing LAP (if the property is located within a master plan historic district with an LAP), and, as specified by the applicant at the time of filing, adjoining and confronting property owners, and other interested parties.
- (c) Emergency Applications Added to Agenda - At the Chairman's discretion, emergency applications may be added to the agenda of a public appearance. It shall be the responsibility of the applicant to hand deliver notices of the emergency application to all adjacent and confronting property owners, LAPs, and other interested parties. The applicant shall obtain written verification that such notices were received and shall present these verifications to the Commission's staff prior to the public appearance.



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## 1.4 Public Appearance

- (a) Time and Place - A public appearance before the Commission shall be held at the date, time, and place designated in the notice, except for public appearances which are continued. However, where circumstances require a change in the date, time, or place of the public appearance after notice has already been given, the Commission shall make reasonable efforts to notify the public of the change.
- (b) Official Record
  - (1) In General - The Commission shall prepare, maintain, and supervise the custody of an official record for each application. The official record shall include the application, exhibits, and minutes or transcript of the public appearance. The official record shall be opened upon the filing of a completed application with the director. Documentary evidence may be received in the form of copies, excerpts, photographic reproductions, models, or by incorporation by reference.
  - (2) Inspection of Official Record - Subject to the provisions of the Maryland Public Information Act, and upon reasonable notice, any person shall have the right to review the official record at reasonable hours at the Commission's office. Any person may, at his own expense, request a copy of the written transcript of any public appearance.
- (c) Ex Parte Communication
  - (1) This rule applies to any ex parte or private communication, written or oral, received by a Commissioners if:
    - a. The communication related to an application before the Commission;
    - b. All appellate rights regarding the application have not been exhausted; and
    - c. The Commission is required by law to make an administrative decision on the matter based on the record.
  - (2) This rule does not apply to:
    - a. Legal or technical advice rendered at the request of the Commission; or
    - b. Any communication about the status or procedure of a pending application.
  - (3) If a Commissioner receives an oral ex parte or private communication, that Commissioner shall reduce the substance of the communication to writing within reasonable time after receipt of the communication and include it in the official record.



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- (4) The Commission shall include the ex parte or private communication in the official record and may:
  - a. Consider the communication as a basis for its decision after giving all parties an opportunity to respond to the communication; or
  - b. Decide the matter if the Commission expressly finds that it has not considered the communication as a basis for its decision.
- (d) Evidence - The Commission may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence which appears to be reliable in nature. It shall give effect to the rules of privilege recognized by law. Evidence must be competent, material, and relevant to all matters at issue. The Commission may exclude incompetent, unreliable, irrelevant or unduly repetitious evidence, or produce evidence at its own request. The Commission may take official notice of commonly cognizable facts, facts within each Commissioner's particular realm of professional expertise, and documents or matters of public record.
- (e) Cross-Examination - Every party has the right of reasonable cross-examination of witnesses who testify, and may submit rebuttal evidence. Repetitious questions and examination on irrelevant matters is not permitted. Cross examination is subject to reasonable regulation by the Commission including the designation of specific persons to conduct cross-examination on behalf of other parties.
- (f) Right to Counsel - In any case governed by these procedures, all parties have the right to be represented by themselves or by an attorney of their choice.
- (g) Powers of the Commission in Conducting a Public Appearance - In addition to any of the powers granted to the Commission by Chapter 24A, the Commission may, at their discretion, undertake the following so as to achieve the orderly and efficient conduct of business:
  - (1) Regulate the course of a public appearance and allow the official record in a public appearance to remain open;
  - (2) Dispose of procedural requests or similar matters, including requests for a continuance;
  - (3) Call, examine, and cross-examine witnesses and obtain and introduce into the official record documentary or other evidence;
  - (4) Request the parties at any time during the public appearance to state their respective positions or theory concerning any issues in the application;
  - (5) Take any action authorized by law or necessary to a fair disposition of an application;



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- (6) Accept evidence by stipulation of facts;
- (7) Schedule, suspend, or continue a public appearance to a date and time certain with notification as provided for in this regulation;
- (8) Require the designation a spokesperson for any group of parties either supporting or opposing an application who shall conduct any opening, direct examination, cross-examination, closing or testimony in general, so as to achieve the orderly presentation of a case.

(h) Public Appearance Conduct and Procedure

- (1) Unless otherwise provided by law:
  - a. A quorum of the Commission must be present to conduct a public appearance or hearing.
  - b. All public appearances and hearings shall be de novo before the Commission.
  - c. The members of the Commission shall be subject to disqualification for conflict of interest as defined by Section 410 of the Montgomery County Charter, and Chapter 19A of the Montgomery County Code. Suggestions for disqualification of any Commissioner may be made on petition of any party. A motion for disqualification shall be resolved by the Commissioner whose disqualification is sought.

- (2) The Commission may establish reasonable time limitations and registration requirements for witnesses and speakers, so that all may have an opportunity to be heard. In general, these time limits will be:

HAWP applicant's presentation:	7 minutes
Comment by adjacent owners/interested parties:	3 minutes
Comment by citizen associations/interested groups:	5 minutes
Comment by elected officials/government representatives:	7 minutes

The Commission may waive these time limits and may decide whether speakers will be required to register in advance or at the meeting, depending on the complexity of the case. Direction as to when and how to register to speak on an issue will be made clear in the notice for the meeting.

- (3) All exhibits accepted shall be held or referenced in the official record. Those exhibits



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whose admission is rejected shall either be returned to the offering party or retained in the official record with appropriate notations reflecting that the material was rejected as an exhibit.

- (4) Rulings on motions, petitions, and objections made during the course of a public appearance shall be ruled on as received or as soon thereafter as practicable.
- (5) The ordinary, but not mandatory, order or procedure for the conduct of a public appearance and the presentation of evidence is as follows, subject to waiver or such reasonable changes as may be ordered by the Commission or by law:
  - a. Disposition of all outstanding preliminary motions and preliminary matters.
  - b. Presentation by Commission staff.
  - c. Opening statement and presentation of factual case of the applicant.
  - d. Presentation of factual case and statements of other parties.
  - e. Presentation of rebuttal evidence of the applicant.
  - f. Closing arguments of the applicant.
  - g. Closing arguments of other parties opposing the application.
  - h. At the end of each presentation, any party, upon recognition by the chair, may briefly cross-examine any speaker.
- (6) During regularly scheduled public appearances, the Commission may review applications on an expedited basis - that is without presentations by staff, applicant, or other parties - if there are not parties opposing the application.
- (7) Unless otherwise determined by the Commission, the record shall remain open until the final decision is made. Once the record is closed, no additional information will be received except for good cause shown and a showing that it is material.
- (i) Failure to Appear - Upon the failure of an applicant to appear at a public appearance, and upon finding that such party had timely legal or actual notice of the appearance, the Commission may receive evidence and decide the case as if all parties were present.

## 1.5 Criteria for Approval

- (a) The Commission shall be guided in their review of Historic Area Work Permit applications by:
  - (1) The criteria in Section 24A-8.



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- (2) The Secretary of the Interior's Standards and Guidelines for Rehabilitation.
  - (3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in historic districts by level of significance - if applicable. Such categories will be defined and explained clearly in the applicable plans.
  - (4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.
- (b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the Secretary of the Interior's Standards and Guidelines for Rehabilitation, the master plan guidance shall take precedence.

## 1.6 Decisions

- (a) Content - All decisions of the Commission, except rulings on preliminary matters or on motions or objections, must be based on the evidence contained in the official record. Written decisions - containing findings of fact, conclusions of law, and an appropriate decision and order - will be issued on all denials. In all cases, each decision will conclude with instructions to the director to:
  - (1) Issue the permit as described in the application, including amendments to the application that may have occurred subsequent to its initial filing;
  - (2) Issue the permit subject to the conditions stipulated in the decision; or
  - (3) Deny the permit.
- (b) Voting Requirements - Every decision must have the concurrence of a majority of the voting members of the Commission. Members of the Commission absent during a public appearance may vote upon a matter upon written certification that they have reviewed the verbatim transcript of the appearance, and reviewed the evidence contained in the official record.
- (c) Notification of Decision - All decisions of the Commission must be made public and mailed to the applicant.
- (d) Delegation to Staff
  - (1) The Commission's authority to review and approve Historic Area Work Permit applications for simple alterations that will have no more than an insignificant impact on the historic character of the resource is delegated by the Commission to the staff, subject to the following conditions:
    - a. The staff member assigned to review the application meets the Secretary of the



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Interior’s Historic Preservation Professional Qualification Standards (see 36 CFR Part 61) for history, architectural history, architecture, or historic architecture; and

b. The alteration, as proposed, satisfies the criteria for approval under County Code Section 24A-8, the Secretary of the Interior’s Standards for Rehabilitation, and any applicable district or resource-specific design guidelines.

- (2) If the work identified in the application requires additional conditions to satisfy the criteria for approval or the staff member recommends denial, the application must be placed on the next available Commission meeting agenda and will be subject to the publishing and notice requirements of County Code Section 24A-7.
- (3) Additional documents such as Adopted Master Plan amendments or historic preservation easements accepted under County Code Section 24A-13 may define additional work items specific to the subject property that may also qualify for staff level approval of Historic Area Work Permit applications.
- (4) Staff review and action must take place within 5 business days from the date that the Director forwards a complete application to the Commission for review.
- (5) Any application not acted upon after 5 business days must be placed on the next available Commission meeting agenda and will be subject to the publishing and notice requirements of County Code Section 24A-7.
- (6) If the proposed alteration satisfies the criteria for staff-level approval, the publication, notification, and public meeting requirements of Section 24A-7 are waived.
- (7) The proposed alteration must not significantly alter the historical or visual character of the property and must fall into one of the following categories:
  - a. Repair or replacement of a masonry foundation with new masonry materials that closely match the original in appearance;
  - b. Installation of vents or venting pipes in locations not visible from the public right-of-way;
  - c. New gutters and downspouts;
  - d. Removal of vinyl, aluminum, asbestos, or other artificial siding when the original siding is to be repaired and/or replaced in kind;
  - e. Removal of accessory buildings that are not original to the site or non-historic construction;



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- f. Repair or replacement of missing or deteriorated architectural details such as trim or other millwork, stairs or stoops, porch decking or ceilings, columns, railings, balusters, brackets shutters, etc., with new materials that match the old in design, texture, visual characteristics, and, where possible materials, so long as the applicant is able to provide one extant example, photographic evidence, or physical evidence that serves as the basis for the work proposed;
- g. Construction of wooden decks that are at the rear of a structure and are not visible from a public right-of-way;
- h. Roof replacement with -compatible roofing materials, or with architectural shingles replacing 3-Tab asphalt shingles;
- i. Installation of storm windows or doors that are compatible with the historic resource or district;
- j. Repair, replacement or installation of foundation-level doors, windows, window wells, and areaways, or foundation vents, venting pipes, or exterior grills that do not alter the character-defining features and/or the historic character of the resource;
- k. Construction of fences that are compatible with the historic site or district in material, height, location, and design;
- l. Construction of walkways, parking pads, patios, driveways, or other paved areas that are not visible from a public right-of-way and measure no more than 150 square feet in size;
- m. Replacement of existing walkways, parking pads, patios, driveways, or other paved areas with materials that are compatible with the visual character of the historic site and district and that are no greater than the dimensions of the existing hardscape;
- n. Construction of small accessory buildings no larger than 250 square feet in size that are not visible from the public right-of-way;
- o. Installations of skylights on the rear of a structure that will not be visible from the public right-of-way, and would not remove or alter character-defining roof materials;
- p. Installation of solar panels and arrays in locations that are not readily visible from the public right-of-way or that are designed so as to have a minimal impact on the



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historic resource or the historic district (e.g., systems that are ground-mounted in areas other than the front or side yard of a corner lot, located on accessory or outbuildings, on non-historic additions, or on rear facing roof planes);

- q. Installation of car charging stations in any location on a property or in the right-of-way;
- r. Installation of satellite dishes;
- s. Removal of trees greater than 6” in diameter (d.b.h.) that are dead, dying, or present an immediate hazard.
- t. Removal of trees greater than 6” in diameter (d.b.h.) in the rear of the property that will not impact the overall tree canopy of the surrounding district or historic site; and,
- u. Other minor alterations that may be required by the Department of Permitting Services post-Commission approval that would have no material effect on the historic character of the property.

- (8) For the construction of fences under Section 1.6(d)(7)k. the Commission may create and distribute design guidelines to further clarify compatible fence designs. Fences approved administratively must not be higher than 48” forward of the rear wall plane.
- (9) Staff may condition approval to remove trees under Section 1.6(d)(7)s. on the replanting of trees on the property with a replacement ratio of one-to-one.
- (10) Staff must notify the applicant of the approval and report monthly to the Commission, appropriate LAP, and, if applicable, the municipality about applications reviewed and approved by Commission staff in the previous month.

APPROVED AS TO FORM AND LEGALITY

By:   
Walter E. Wilson  
Associate County Attorney

\_\_\_\_\_  
Marc Elrich  
County Executive

Date: 7/30/20